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3. Compromise and Settlement (§ 3*)—Fraud.—A party who made a deliberate settlement of all alleged fraud upon him with his eyes wide open was bound by his contract, since parties may settle frauds as well as anything else if they act with knowledge of the facts.

[Ed. Note.—For other cases, see *Compromise and Settlement*, Cent. Dig. §§ 5, 6; Dec. Dig. § 3.* 3 Va.-W. Va. Enc. Dig. 42.]

Appeal from Chancery Court of Richmond.

Bill by J. W. Harris against W. M. Cary. From a decree for complainant, defendant appeals. Decree reversed, and decree entered dismissing complainant's bill.

Jas. E. Cannon and *S. A. Anderson*, both of Richmond, for appellant.

G. A. Hanson and *P. E. Hardin*, both of Richmond, for appellee.

CITY OF DANVILLE *v.* LIPFORD.

Jan. 11, 1917.

[91 S. E. 168.]

1. Appeal and Error (§ 1005 (3)*)—Review—Conflicting Testimony.—If by disregarding the testimony of defendant the evidence is sufficient to sustain a finding of negligence on his part, no error is committed by refusing to grant a new trial urged on the ground that such finding is contrary to the evidence.

[Ed. Note.—For other cases, see *Appeal and Error*, Cent. Dig. §§ 3860-3876, 3949; Dec. Dig. § 1005 (3).* 1 Va.-W. Va. Enc. Dig. 605.]

2. Master and Servant (§ 291 (1)*)—Injuries to Servant—Instructions.—Instructions given in an action by a workman against a city to recover for injuries sustained in stepping through a trestle of the city gas plant held proper.

[Ed. Note.—For other cases, see *Master and Servant*, Cent. Dig. § 1133; Dec. Dig. § 291 (1).* 7 Va.-W. Va. Enc. Dig. 707.]

3. Trial (§ 260 (1)*)—Instructions Already Given.—Denial of a requested instruction that the "unbending test" of negligence is the standard established by usage in like business and that plaintiff must show by a preponderance of evidence that such standard was not lived up to was not error, where the court otherwise instructed that "ordinary or reasonable care is such care as other reasonably prudent companies use in conducting like business."

[Ed. Note.—For other cases, see *Trial*, Cent. Dig. § 651; Dec. Dig. § 260 (1).* 7 Va.-W. Va. Enc. Dig. 707.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

4. Appeal and Error (§ 1053 (3)*)—Harmless Error—Admission of Evidence.—In a personal injury suit, evidence of ice on a trestle improperly admitted because not alleged in declaration, and not stricken out on motion, held cured by an instruction that, if ice was proximate cause of injury, there was no liability.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 4180-4182; Dec. Dig. § 1053 (3); Trial, Cent. Dig. § 977.* 1 Va.-W. Va. Enc. Dig. 619.]

Error to Circuit Court of City of Danville.

Action by J. D. Lopford against the City of Danville. From a judgment for plaintiff, defendant brings error. Affirmed.

E. Walton Brown, of Danville, for plaintiff in error.

B. H. Custer, of Danville, for defendant in error.

KLAFF *v.* VIRGINIA RY. & POWER CO.

Jan. 11, 1917.

[91 S. E. 173.]

Pleading (§ 11*)—Setting out Evidence.—It is enough for the declaration in an action for malicious prosecution, showing the plaintiff was acquitted, to allege want of probable cause, without setting out the evidence thereof; such allegation not being the assertion of a conclusion of law, but of an ultimate fact, that is, one in issue.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 31; Dec. Dig. § 11.* 9 Va.-W. Va. Enc. Dig. 505.]

Appeal from Law and Chancery Court of City of Norfolk.

Action by Isaac Klaff against the Virginia Railway & Power Company. From a judgment of dismissal, plaintiff appeals. Reversed and remanded.

Rumble & Campe, of Norfolk, for plaintiff in error.

R. E. Miller and *W. H. Venable*, both of Norfolk, and *H. W. Anderson*, of Richmond, for defendant in error.

LEWIS *v.* COMMONWEALTH.

Jan. 16, 1917.

[91 S. E. 174.]

False Pretenses (§ 38*)—Indictment—Variance.—The charged offense of larceny of money by false pretenses defined by Code 1904, § 3722, was substantially proven by evidence that the money was

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.